

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following:

Group I: Claims 1-6, drawn to a member; and

Group II: Claims 7-10, drawn to a method of manufacturing a member.

Applicants elect, with traverse, Group I, Claims 1–6 (drawn to a member), for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner should restriction not be required (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Examiner has alleged that Groups I and II are not linked to form a single general inventive concept under PCT Rule 13.1 for the following reason: “The method of claim 7 does not necessarily make the product of claim 1 and therefore do not relate to a single inventive concept.” Therefore, the same special technical feature is allegedly lacking between these two groups.

However, Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states:

“The expression “special technical feature” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants contend that the Examiner did not consider the contribution of the invention, as a whole, over the prior art, nor did the Examiner consider the content of the claims, as interpreted in view of the description, in asserting a lack of unity between the Groups; therefore, the Examiner has not met the burden necessary to support the assertion of a lack of unity of the invention.

For the reason presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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